



March 30, 2001

ENGROSSED SENATE BILL No. 526

DIGEST OF SB 526 (Updated March 28, 2001 12:45 PM - DI 73)

Citations Affected: IC 23-2.

Synopsis: Loan brokers and broker dealers. Specifies that a supervised lender or a nonsupervised automatic lender of the United States Department of Veterans Affairs is not included in the definition of "loan broker" for purposes of the law regulating loan brokers. Requires the securities commissioner to retain the initial or renewal application fee paid for any license application that is withdrawn or denied. Creates the loan broker regulation account in the state general fund. Provides that all of the fees and funds, other than the costs of investigations and civil penalties recovered under the loan broker statute, must be used for the regulation of loan brokers. Provides that the anti-fraud provisions of the loan broker laws apply to registered and unregistered loan brokers.

Effective: July 1, 2001; January 1, 2002.

Long, Lanane, Howard, Mrvan, Clark
(HOUSE SPONSORS — KUZMAN, TORR)

January 22, 2001, read first time and referred to Committee on Commerce and Consumer Affairs.

February 8, 2001, amended, reported favorably — Do Pass.

February 12, 2001, read second time, ordered engrossed.

February 13, 2001, engrossed.

February 15, 2001, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 26, 2001, read first time and referred to Committee on Ways and Means.

March 29, 2001, amended, reported — Do Pass.

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March 30, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED SENATE BILL No. 526

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 23-2-5-3, AS AMENDED BY P.L.14-2000,
2 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2002]: Sec. 3. (a) As used in this chapter, "certificate of
4 registration" means a certificate issued by the commissioner
5 authorizing an individual to engage in origination activities on behalf
6 of a licensee.
7 (b) As used in this chapter, "creditor" means a person:
8 (1) that loans funds of the person in connection with a loan; and
9 (2) to whom the loan is initially payable on the face of the note or
10 contract evidencing the loan.
11 (c) As used in this chapter, "license" means a license issued by the
12 commissioner authorizing a person to engage in the loan brokerage
13 business.
14 (d) As used in this chapter, "licensee" means a person that is issued
15 a license under this chapter.
16 (e) As used in this chapter, "loan broker" means any person who, in
17 return for any consideration from any person, promises to procure a

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loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. "Loan broker" does not include:

(1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(2) any person authorized to sell and service loans for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the United States Department of Housing and Urban Development, ~~make loans guaranteed by~~ **act as a supervised lender or nonsupervised automatic lender of** the United States Department of Veterans Affairs, or act as a correspondent of loans insured by the United States Department of Housing and Urban Development; ~~or guaranteed by the United States Department of Veterans Affairs;~~

(3) any insurance company; or

(4) any person arranging financing for the sale of the person's product.

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means establishing the terms or conditions of a loan with a borrower or prospective borrower.

(h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(i) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

SECTION 2. IC 23-2-5-5, AS AMENDED BY P.L.230-1999,



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SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) An application for license or renewal of a license must contain:

- (1) consent to service of process under subsection (e);
- (2) evidence of the bond required in subsection (b);
- (3) an ~~initial~~ **application** fee of two hundred dollars (\$200);
- (4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the commissioner under subsection (f);
- (5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;
- (6) a registration form setting forth the name, home address, home telephone number, and Social Security number of each employee or prospective employee of the applicant who is or who will be engaged in origination activities; and
- (7) evidence that the license applicant's proposed registrants have completed the education requirements of section 21 of this chapter.

(b) A licensee must maintain a bond satisfactory to the commissioner in the amount of fifty thousand dollars (\$50,000), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(c) The commissioner shall issue a license to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration authorizing the registrant to engage in origination activities.

(d) Licenses issued by the commissioner before January 1, 2001, shall be valid, and renewal of such licenses shall not be required until January 1, 2001. Individuals engaging in origination activities for a licensee before January 1, 2001, shall not be required to apply for and receive a certificate of registration until January 1, 2001. Except as otherwise provided in this subsection, licenses and certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance. The education requirements of section 21 of this chapter shall first apply to applicants for issuance or renewal of licenses or registrations effective as of January 1, 2001.

(e) Every applicant for licensure or for renewal of a license shall file



with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(f) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(g) Whenever an initial or renewal application for license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

SECTION 3. IC 23-2-5-6, AS AMENDED BY P.L.230-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. ~~(a)~~ A licensee may not continue engaging in the loan brokerage business unless the licensee's license is renewed biennially. A registrant may not continue engaging in origination activities unless the registrant's certificate of registration is renewed biennially. A licensee shall renew its license and the certificates of registration of its registrant employees by filing with the commissioner, at least thirty (30) days before the expiration of the registration, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.

~~(b) The fee for renewal of a registration is one hundred dollars (\$100) per year, to be paid biennially when an application for renewal is filed.~~

SECTION 4. IC 23-2-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. **(a) The loan broker regulation account is created in the state general fund. The money in the loan broker regulation account may be used only for the regulation of loan brokers under this chapter. The loan broker regulation account shall be administered by the treasurer of state. The money in the loan broker regulation account does not revert to any other account within the state general fund at the end of a state fiscal year.**

(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the commissioner and shall be deposited with the treasurer of state who shall deposit them in the loan broker regulation account in the state general fund.

(c) All expenses incurred in the administration of this chapter shall

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1 be paid from appropriations made from the state general fund.
2 However, costs of investigations and civil penalties recovered under
3 this chapter shall be deposited in the securities division enforcement
4 account created under IC 23-2-1-15. The funds in the **securities**
5 **division enforcement** account shall be available, with the approval of
6 the state budget agency, to augment and supplement the funds
7 appropriated for the administration of this chapter.

8 SECTION 5. IC 23-2-5-20, AS AMENDED BY P.L.230-1999,
9 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2001]: Sec. 20. A ~~licensee or registrant~~ **person** shall not, in
11 connection with a contract for the services of a loan broker, either
12 directly or indirectly, do any of the following:

- 13 (1) Employ any device, scheme, or artifice to defraud.
- 14 (2) Make any untrue statements of a material fact or omit to state
15 a material fact necessary in order to make the statements made, in
16 the light of circumstances under which they are made, not
17 misleading.
- 18 (3) Engage in any act, practice, or course of business that operates
19 or would operate as a fraud or deceit upon any person.
- 20 (4) Collect or solicit any consideration, except a bona fide third
21 party fee, in connection with a loan until the loan has been closed.

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SENATE MOTION

Mr. President: I move that Senators Lanane, Howard, Mrvan, and Clark be added as coauthors of Senate Bill 526.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 526, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:
 "SECTION 1. IC 23-2-5-3, AS AMENDED BY P.L.14-2000, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to engage in origination activities on behalf of a licensee.

(b) As used in this chapter, "creditor" means a person:

- (1) that loans funds of the person in connection with a loan; and
- (2) to whom the loan is initially payable on the face of the note or contract evidencing the loan.

(c) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

(d) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(e) As used in this chapter, "loan broker" means any person who, in return for any consideration from any person, promises to procure a loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. "Loan broker" does not include:

(1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(2) any person authorized to sell and service loans for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the United States Department of Housing and Urban Development, ~~make loans guaranteed by~~ **act as a supervised lender, nonsupervised lender, or nonsupervised automatic lender of the United States**

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Department of Veterans Affairs, or act as a correspondent of loans insured by the United States Department of Housing and Urban Development; ~~or guaranteed by the United States Department of Veterans Affairs;~~

(3) any insurance company; or

(4) any person arranging financing for the sale of the person's product.

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means establishing the terms or conditions of a loan with a borrower or prospective borrower.

(h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(i) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances."

Page 2, delete lines 1 through 41.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 526 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 10, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 526, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective date in SECTION 1 with "[EFFECTIVE JANUARY 1, 2002]".

Page 2, line 17, delete ", nonsupervised".

Page 2, line 18, delete "lender,".

and when so amended that said bill do pass.

(Reference is to SB 526 as printed February 9, 2001.)

BAUER, Chair

Committee Vote: yeas 22, nays 0.

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